IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr.A.No.407 of 1999

Judgment Reserved on 13.12.2006

Date of decision 18 -12-2006

State of H.P. Appellant

Versus

Naresh Kumar and others Respondents

Coram:

The Hon'ble Mr. Justice V.K.Ahuja, Judge.

Whether approved for reporting?[1] No.

For the appellant : Mr.C.B.Singh, Dy. Advocate General.

For the respondents: Mr.Ramakant Sharma, Advocate.

V.K.Ahuja, J.

This is an appeal filed by the appellant-State against the judgment of the court of learned Judicial Magistrate Ist Class, Solan dated 5.4.1999 vide which the accused were acquitted of the charges framed under Sections 452, 506 and 323 read with section 34 IPC.

Briefly stated the facts of the case are that a report was lodged with the police by one Leela Devi complainant that on the night intervening 22nd and 23rd June,1999 at about 1.30 a.m. she heard the noise of 3-4 persons who gave a knock at her door and asked her to open the door. She did not open the door but still they came inside by breaking open the door who were having dandas in their hands. The accused persons gave beatings to her as well as Roopa Devi her daughter. The report was lodged with the police on the next day at about 2.20 p.m. on which a case was registered. The challan was filed before the learned trial court who tried the respondents who were acquired of the charge.

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1 Whether reporter of local papers are allowed to see the judgment ? No.

I have heard Mr.C.B.Singh, learned Deputy Advocate General for the appellant and Mr.Ramakant Sharma, learned counsel for the respondents and have gone through the record.

The submissions made by the learned Deputy Advocate General were that the statement of the complainant had been duly corroborated by the statement of her daughter and the mere fact that both these witnesses are related to one another is not sufficient to disbelieve their version and as such the findings to the contrary recorded by learned trial court are liable to be reversed. On the other hand, learned counsel for the respondents had supported the impugned judgment for the reasons given therein.

On perusal of the record of the case, it is clear that there is a statement of PW-1 Leela Devi who stated that all the four accused persons were living nearby and on the intervening night of 22 and 23.6.1996 at 1.30 a. m., she was present in her house along with her daughter Roopa Devi and sons Manmohan and Khem Singh. Her husband was away. The accused persons asked her to open the door but when she did not open, they broke open the door and came inside with dandas. They stated at that time that they will take Roopa Devi with them and her sons Manmohan and Khem Singh stated that how they have came inside. The accused started giving beatings to her. The beatings were given with leg, fist and danda. Khem Singh suffered injury on his head, while she suffered injury on her finger and her daughter suffered injury on her arm, while her son suffered injury on his back. She admitted that there was a dispute with the accused persons since their cattle come to their field, which was objected to by them. She admitted that they are not on visiting terms with accused persons for last several years and they do not visit each other even on marriages, but for what reasons she was not aware. She stated that she was sleeping in the kitchen room and the accused had not come in the kitchen room, but she opened the kitchen room door and came to the other room and at that time the door was

open. She stated that she came there and separated both the parties who were quarrelling for the last 1 ½ and 2 hours. The accused persons left their house at 3.30 or 4 a.m. She stated that when both the parties were grappling each other and she separated them, she suffered injuries at that time. She stated that Roopa Devi had been given blow with dada by Sandeep accused. But she had not mentioned this fact in her report. She stated that she is not aware which blow given by which of the accused persons.

PW-3 Roopa Devi daughter of complainant stated that the accused persons forcibly opened the door and were having dandas in their hands. When her mother came from kitchen, the accused gave beatings with dandas. Her brother Khem Singh also received injuries while rescuing her, while Phyare Lal accused gave a slap blow over the face of her brother Manmohan. It was not so stated by complainant. Her cousin Khem Singh ran away to field because of fear and while leaving, the accused gave a threat also which was not so stated by the complainant. In cross-examination she stated that when the accused knocked the door they opened the door, which is contrary to the version of the complainant who has stated differently. She stated that the accused left the place after fifteen minutes, whereas the complainant has stated that they quarreled for 1 ½ and 2 hours and stayed there till 3.30 a.m. to 4 a.m. She stated that the accused persons did not talk to them and her brothers also did not say anything to the accused, which is contrary to the version of the complainant that they had stated that they will take Roopa and her brothers objected to it. She stated that she cannot say that which of the accused gave blows to which of the injured persons. She admitted that they are not on talking terms with accused but cannot say since when. PW Manmohan was given up. PW Ranjit Singh turned hostile and did not support the prosecution story. PW-6 Dhani Singh stated that he learnt the occurrence on telephone. The statements of the other witnesses are not material.

From the above discussion of the evidence, it is clear that there is statement of complainant and her daughter only, which do not corroborate one another, and statements of other witnesses are contradictory about the occurrence. Their statements are not such upon which a conviction could have been based by learned trial court and as such the findings recorded by learned trial court cannot be said to be perverse so as to call for interference by this court and as such are liable to be affirmed. The appeal filed by the appellant is dismissed. Bail bonds furnished by the respondents shall stand discharged forthwith.

December 18,2006(g) **(V.K.Ahuja),J.**